APPENDIX

Examples of Supremacy Clause Cases

Decided By This Court

In the 61 cases listed below, this Court decided claims for injunctive or declaratory relief initially brought in federal court against implementation of a state law on the ground that it conflicted with a federal statute or regulation, and thus was preempted under the Supremacy Clause. Based on our review, the preemption claims in these cases were not brought under 42 U.S.C. §1983; nor does it appear that the federal statutes involved contain the type of "rights-creating" language necessary to satisfy the test set forth in *Gonzaga University v. Doe*, 536 U.S. 273 (2002). There are numerous additional preemption cases decided by this Court that address Supremacy Clause injunction claims initially brought in state court.

1. *Chamber of Commerce of the U.S. v. Whiting*, 131 S. Ct. 1968 (2011) (business and civil rights groups sought declaratory and injunctive relief against state statute regulating employment of non-citizens unauthorized to work, claiming preemption by federal Immigration Reform and Control Act)

2. *Chamber of Commerce of the U.S. v. Brown*, 554 U.S. 60 (2008) (reversing denial of declaratory and injunctive relief in employers' action against state statute prohibiting recipients of certain state grants from using state funds to assist, promote, or deter union organizing, finding preemption by federal National Labor Relations Act)

3. *Rowe v. New Hampshire Motor Transp. Ass'n*, 552 U.S. 364 (2008) (affirming declaratory and injunctive relief in action by transportation groups against state

statute regulating tobacco shipments, as preempted by Federal Aviation Administration Authorization Act)

4. *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1 (2007) (affirming declaratory and injunctive relief in bank's action against state laws governing subsidiaries of nationally chartered banks, as preempted by National Bank Act and related regulations)

5. *Arkansas Dep't of Health & Human Servs. v. Ahlborn*, 547 U.S. 268 (2006) (affirming declaratory relief in action by Medicaid recipient against state statute requiring agency to assert lien in excess of medical expenses paid, as preempted by Medicaid Act)

6. *Engine Mfrs. Ass'n v. South Coast Air Quality Mgmt. Dist.*, 541 U.S. 246 (2004) (vacating Court of Appeals order affirming summary judgment against claims by diesel engine manufacturers, injured by reduced sales, seeking declaratory and injunctive relief against state regulation of vehicle fleets, finding regulations likely preempted at least in part by Clean Air Act, and remanding for lower courts to determine specifically which regulations were preempted)

7. *Pharmaceutical Research & Mfrs. of Am. v. Walsh*, 538 U.S. 644 (2003) (pharmaceutical manufacturer association sought injunction against state statute implementing prescription drug rebate program, claiming preemption by federal Medicaid Act)

8. *Kentucky Ass'n of Health Plans, Inc. v. Miller*, 538 U.S. 329 (2003) (HMOs sued for declaratory and injunctive relief against state statute that impaired insurers' discretion to contract selectively with health care providers, claiming ERISA preemption)

9. *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424 (2002) (towing company sought

declaratory and injunctive relief against municipal ordinance regulating tow trucks, claiming preemption by federal Interstate Commerce Act)

10. *Verizon Md., Inc. v. Public Serv. Comm'n of Md.*, 535 U.S. 635 (2002) (concluding that doctrine of *Ex parte Young* permits telecommunications company's suit for declaratory and injunctive relief against state commission order requiring payments to competitor, claiming preemption by federal Telecommunications Act of 1996)

11. *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001) (reversing denial of declaratory relief in action by tobacco manufacturers and sellers against state regulations restricting sale and marketing of tobacco products, finding preemption by Federal Cigarette Labeling and Advertising Act)

12. *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000) (affirming summary judgment for association of companies engaged in foreign commerce who sought declaratory and injunctive relief against state statute restricting trade with Burma, finding preemption by federal Foreign Operations, Export Financing, and Related Programs Appropriations Act)

13. *United States v. Locke*, 529 U.S. 89 (2000) (reversing denial of declaratory and injunctive relief in action by trade association of oil tanker operators against state regulations governing tanker operations, finding preemption by federal Ports and Waterways Safety Act)

14. *Foster v. Love*, 522 U.S. 67 (1997) (affirming Court of Appeals order reversing denial of injunction in voters' suit for declaratory and injunctive relief against state primary system, finding preemption by federal election statutes)

15. *De Buono v. NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806 (1997) (trustees of ERISA-regulated health

plans sought injunction against state tax on medical centers, claiming ERISA preemption)

16. *California Div. of Labor Standards Enforcement v. Dillingham Constr., N. Am., Inc.*, 519 U.S. 316 (1997) (contractors sought declaratory relief against state statute limiting payment of wages below prevailing wage rate in public contracts to apprentices in state-approved programs, claiming ERISA preemption)

17. *Dalton v. Little Rock Family Planning Servs.*, 516 U.S. 474 (1996) (per curiam) (remanding for entry of narrower injunction, in action by Medicaid providers seeking declaratory and injunctive relief against state constitutional amendment prohibiting use of state funds for abortions, as preempted by Social Security Act and Hyde Amendment)

18. *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995) (insurers sought injunction against state statute that imposed surcharges on hospital rates for patients of certain insurance carriers, claiming ERISA preemption)

19. *Building & Const. Trades Council of the Metro. Dist. v. Associated Builders & Contractors of Mass./R.I., Inc.*, 507 U.S. 218 (1993) (organization representing nonunion employers sought declaratory and injunctive relief against provision in state agency's project bid solicitation, claiming preemption by the National Labor Relations Act)

20. *District of Columbia v. Greater Wash. Bd. of Trade*, 506 U.S. 125 (1992) (affirming Court of Appeals reversal of district court denial of injunction in employer's action against District of Columbia statute regulating health care coverage, finding ERISA preemption)

21. *Gade v. National Solid Wastes Mgmt. Ass'n*, 505 U.S. 88 (1992) (affirming order of Court of Appeals in action

for declaratory and injunctive relief by trade association against state statute regulating employees handling hazardous waste, finding preemption by Occupational Safety and Health Act and related regulations)

22. *Morales v. Trans World Airlines*, 504 U.S. 374 (1992) (affirming declaratory and injunctive relief directed at certain state guidelines governing airfare advertising, as preempted by federal Airline Deregulation Act, in suit by airlines)

23. *Puerto Rico Dep't of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495 (1988) (oil refineries and wholesalers sought declaratory and injunctive relief against Puerto Rico agency orders regulating oil prices, claiming preemption by federal Emergency Petroleum Allocation Act)

24. *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988) (affirming declaratory judgment against state statute requiring state approval for natural gas companies to issue securities, finding preemption by federal Natural Gas Act)

25. *California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572 (1987) (mining corporation sought declaratory and injunctive relief against state permit requirement, claiming preemption by federal Coastal Zone Management Act, other federal land use statutes, and United States Forest Service regulations)

26. *California Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272 (1987) (employer sued for declaratory and injunctive relief against state statute requiring reinstatement of employees after pregnancy leave, claiming preemption by Title VII of the Civil Rights Act of 1964)

27. *Wisconsin Dep't of Indus., Labor & Human Relations v. Gould Inc.*, 475 U.S. 282 (1986) (affirming

declaratory and injunctive relief obtained by debarred business against state statute penalizing repeat violators of the National Labor Relations Act (NLRA), as preempted by the NLRA itself)

28. *Hillsborough County, Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707 (1985) (operator of plasma centers sought declaratory and injunctive relief against ordinance regulating plasma collection, claiming preemption by Food and Drug Administration regulations)

29. *Lawrence County v. Lead-Deadwood Sch. Dist.*, 469 U.S. 256 (1985) (approving of federal court preemption injunction action and holding state statute regulating distribution of funds preempted by Payment in Lieu of Taxes Act)

30. *Brown v. Hotel & Rest. Emps. & Bartenders Int'l Union Local 54*, 468 U.S. 491 (1984) (union and its president sued for declaratory and injunctive relief against state law regulating unions representing casino employees, claiming preemption by National Labor Relations Act)

31. *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691 (1984) (reversing Court of Appeals order that dissolved injunctions and reversed declaratory judgments, in action by cable television operators against state ban on broadcast advertising of alcoholic beverages, finding preemption by Federal Communications Commission regulations)

32. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983) (affirming in part declaratory and injunctive relief in employers' suit against state law prohibiting pregnancy discrimination in employee benefits plans, finding ERISA preemption)

33. *Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190 (1983) (utility com-

panies sued for declaratory and injunctive relief against state statute that conditioned construction of nuclear power plants on availability of adequate storage and disposal facilities, claiming preemption by federal Atomic Energy Act and related regulations)

34. *Edgar v. Mite Corp.*, 457 U.S. 624 (1982) (corporation sought declaratory and injunctive relief against state securities law, claiming preemption by federal Williams Act)

35. *New York Tel. Co. v. New York State Dep't of Labor*, 440 U.S. 519 (1979) (employers sued for declaratory and injunctive relief against state statute that provided for unemployment benefits to striking workers, claiming preemption by National Labor Relations Act and Social Security Act)

36. *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 439 U.S. 96 (1978) (automobile manufacturer and franchisees sought declaratory and injunctive relief against state statute requiring agency approval to open new retail dealerships, claiming preemption by Sherman Act)

37. *Malone v. White Motor Corp.*, 435 U.S. 497 (1978) (employer sued for declaratory and injunctive relief against state statute imposing pension funding charge on certain employers, claiming preemption by National Labor Relations Act)

38. *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978) (affirming in part declaratory and injunctive relief in tanker vessel operators', owners', and customers' suit against state statute regulating oil tanker design, finding preemption by federal Ports and Waterways Safety Act of 1972)

39. *Douglas v. Seacoast Prods., Inc.*, 431 U.S. 265 (1977) (affirming declaratory and injunctive relief in federal

license holders' suit against state statute restricting licensing of state fishing vessels to United States citizens and state residents, finding preemption by federal Enrollment and Licensing Act)

40. *Jones v. Rath Packing Co.*, 430 U.S. 519 (1977) (affirming declaratory and injunctive relief in meat processor's and flower millers' suit against state statute and regulation governing labeling of packaged foods, finding preemption by Federal Meat Inspection Act and Fair Packaging and Labeling Act)

41. *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624 (1973) (affirming lower court opinion finding plaintiffs entitled to injunction against municipal noise ordinance banning night flights, finding preemption under Federal Aviation Act)

42. *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325 (1973) (ship and oil terminal owners and operators and shipping associations sought declaratory and injunctive relief against state statute governing oil spill liability, claiming preemption by Water Quality Improvement Act and Admiralty Extension Act)

43. *Perez v. Campbell*, 402 U.S. 637 (1971) (reversing denial of declaratory and injunctive relief against state statute automatically suspending driver's license based on nonpayment of judgments, finding preemption by Bankruptcy Act)

44. *California Dep't of Human Res. Dev. v. Java*, 402 U.S. 121 (1971) (affirming injunction against state statute regarding timing of unemployment insurance benefits suspension pending employer appeals of eligibility determinations, finding preemption by Social Security Act)

45. *Rosado v. Wyman*, 397 U.S. 397 (1970) (remanding for lower court to enter declaratory relief and injunction against state public benefits plan as preempted by Social

Security Act, if state did not timely develop alternate plan)

46. *Railroad Transfer Serv., Inc. v. City of Chicago*, 386 U.S. 351 (1967) (reversing denial of declaratory and injunctive relief in motor carrier's suit against city ordinance requiring license to operate commercial vehicles, finding preemption by federal Interstate Commerce Act)

47. *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963) (avocado growers sought declaratory and injunctive relief against state statute governing avocado certification, claiming preemption by Agricultural Adjustment Act and related regulations)

48. *Kesler v. Department of Pub. Safety, Fin. Responsibility Div., Utah*, 369 U.S. 153 (1962) (bankrupt sought declaratory and injunctive relief against state statute revoking motor vehicle license and registration, claiming preemption by Bankruptcy Act)

49. *Campbell v. Hussey*, 368 U.S. 297 (1961) (affirming injunction against state statute requiring that certain strains of tobacco be labeled, finding preemption by Tobacco Inspection Act and implementing regulations, in suit by tobacco auction warehouse owners)

50. *Public Utils. Comm'n of Ohio v. United Fuel Gas Co.*, 317 U.S. 456 (1943) (affirming injunction in suit against state commission's orders setting natural gas transport rates, finding preemption by Natural Gas Act of 1938)

51. *Parker v. Brown*, 317 U.S. 341 (1943) (raisin producer sued for injunctive relief against state statute requiring diversion of raisins into surplus and stabilization pools, claiming preemption by Sherman Act and Agricultural Marketing Agreement Act of 1937)

52. *Cloverleaf Butter Co. v. Patterson*, 315 U.S. 148 (1942) (reversing denial of injunction against state statute allowing seizure of food products, finding preemption by federal law governing food inspection, codified in Internal Revenue Code and related regulations)

53. *Hines v. Davidowitz*, 312 U.S. 52 (1941) (affirming injunction against state law requiring non-citizens to register and carry identification, finding preemption by Alien Registration Act of 1940)

54. *Mintz v. Baldwin*, 289 U.S. 346 (1933) (cattle company sought injunction against state order that required certification of disease-free cattle, claiming preemption by federal statute governing shipments from quarantined areas)

55. *Clallam County, Wash. v. United States*, 263 U.S. 341 (1923) (holding for plaintiff corporation in suit seeking decree against state and local tax, finding corporation to be an instrumentality for carrying out war formed under federal Act of July 9, 1918, and thus not subject to state taxation)

56. *Choctaw, Okla., & Gulf R.R. Co. v. Harrison*, 235 U.S. 292 (1914) (reversing denial of injunction against state taxation of railroad operating mines on land leased from Choctaw and Chickasaw Indians, finding railroad to be federal instrumentality not subject to taxation under Curtis Act of 1898)

57. *Cummings v. City of Chicago*, 188 U.S. 410 (1903) (landowners sought declaration of rights, and injunction against municipal ordinance requiring permit for dock construction, claiming preemption by River and Harbor Act of March 3, 1899)

58. *Railway Co. v. McShane*, 89 U.S. (22 Wall.) 444 (1874) (affirming injunction against county taxation of certain property, as preempted by federal Act of July 2, 1864)

59. *Union Pac. R.R. Co. v. Peniston*, 85 U.S. (18 Wall.) 5 (1873) (railroad created by federal Act of July 1, 1862 filed bill to restrain county taxation of certain property, claiming preemption by federal Act of July 2, 1864)

60. *Gilman v. City of Philadelphia*, 70 U.S. (3 Wall.) 713 (1865) (coal wharves owner sought injunction against state law authorizing construction of bridge over river, claiming preemption by federal Act of February 18, 1793, which authorized vessels enrolled and licensed according to its provisions to engage in coasting trade)

61. *Osborn v. Bank of the U.S.*, 22 U.S. (9 Wheat.) 738 (1824) (affirming injunction obtained by Bank of the United States against state tax, finding preemption by federal statute creating the Bank)